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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2088

TIMOTHY D. GARCIA
3115 W. Beech Ave.
Visalia, CA 93277

A C C U S A T I O N

Respiratory Care Practitioner No. 7575

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about July 26, 1985, the Respiratory Care Board issued Respiratory Care Practitioner Number 7575 to Timothy D. Garcia (Respondent). The license was current and valid at all times herein alleged and will expire on September 30, 2008.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
3 8.3, the Respiratory Care Practice Act].”

4 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
5 and revoke licenses to practice respiratory care as provided in this chapter.”

6 6. Section 3750 of the Code states:

7 “The board may order the denial, suspension or revocation of, or the imposition of
8 probationary conditions upon, a license issued under this chapter, for any of the following
9 causes:

10 “(g) Conviction of a violation of any of the provisions of this chapter or of any
11 provision of Division 2 (commencing with Section 500), or violating, or attempting to
12 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
13 violate any provision or term of this chapter or of any provision of Division 2
14 (commencing with Section 500).”

15 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
16 substantially related to the qualifications, functions, or duties of a respiratory care
17 practitioner.”

18 7. Section 3755 of the Code states:

19 “The board may take action against any respiratory care practitioner who is
20 charged with unprofessional conduct in administering, or attempting to administer, direct
21 or indirect respiratory care... The board may determine unprofessional conduct involving
22 any and all aspects of respiratory care performed by anyone licensed as a respiratory care
23 practitioner.”

24 8. California Code of Regulations, title 16, section 1399.370, states:

25 “For the purposes of denial, suspension, or revocation of a license, a crime or act
26 shall be considered to be substantially related to the qualifications, functions or duties of
27 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
28 perform the functions authorized by his or her license or in a manner inconsistent with the

1 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
2 those involving the following:

3 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
4 abetting the violation of or conspiring to violate any provision or term of the Act.”

5 COST RECOVERY

6 9. Section 3753.5, subdivision (a) of the Code states:

7 "In any order issued in resolution of a disciplinary proceeding before the board,
8 the board or the administrative law judge may direct any practitioner or applicant found to have
9 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
10 investigation and prosecution of the case."

11 10. Section 3753.7 of the Code states:

12 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
13 include attorney general or other prosecuting attorney fees, expert witness fees, and other
14 administrative, filing, and service fees."

15 11. Section 3753.1 of the Code states:

16 "(a) An administrative disciplinary decision imposing terms of probation may
17 include, among other things, a requirement that the licensee-probationer pay the monetary costs
18 associated with monitoring the probation. "

19 FIRST CAUSE FOR DISCIPLINE

20 (Dishonesty; Unprofessional Conduct)

21 12. Respondent is subject to disciplinary action under sections 3750(j)
22 [dishonest act], 3750(g) and 3755 [unprofessional conduct] in that he took prescription
23 medication belonging to a co-worker, and denied doing so when his employer confronted him.
24 The circumstances are as follows:

25 13. In October, 2006, Respondent was employed as a respiratory therapist at
26 Hanford Community Medical Center in Hanford, California. The Respiratory Department office
27 and lab had experienced several instances of theft, and in an effort to curtail these incidents, the
28 staff was provided with lockers for their use, a key pad was placed on the entrance door to the

locker room and the code was provided only to respiratory therapists, and a security camera was placed in the locker room.

14. On or about October 7, 2006, Employee A. placed hydrocodone, a prescription medication, into his unlocked locker at the workplace. He forgot to take it home that night and when he returned on Wednesday, October 11, 2006, the medication was missing. Employee A. reported the missing medication to the Director of Respiratory Therapy, Employee B. The hospital security staff and Employee B. reviewed the videotape in the timeframe, and the videotape showed a male individual rummaging through a number of lockers, taking the medication out of one locker and placing it in his pocket. Employee B. and two other hospital employees viewing the tape identified the male individual as Respondent.

15. On October 17, 2006, Employee B. held a meeting with Respondent. The meeting was also attended by Employee C., Clinical Manager of the Respiratory Department. Employee B. told Respondent that on October 10, 2006, a theft had occurred in the department, and that there was clear evidence that he was responsible for the theft. She informed Respondent that they knew he had removed prescription medication from a co-worker's locker and that she would give him an opportunity to resign. Respondent denied taking it, and asked what medication was taken. She told him it was hydrocodone. She reiterated that she had evidence that Respondent had taken the medication, and gave him additional facts relating to the theft, including which locker the medication had been in, the date and time. She again asked Respondent to resign, and he again denied having taken the medication. She gave him a final opportunity to resign, and he stated that he would resign because it was clear to him that she had already made a decision regarding his participation in the theft.

16. Therefore, Respondent's license is subject to discipline because he took prescription medication belonging to a co-worker without permission, and when confronted by his supervisor, he denied doing so, in violation of code sections 3750(j) [dishonest act] and 3755 [unprofessional conduct.]

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1. Revoking or suspending Respiratory Care Practitioner Number 7575,
issued to Timothy D. Garcia.

3. Taking such other and further action as deemed necessary and proper.

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